



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/151454

PRELIMINARY RECITALS

Pursuant to a petition filed August 17, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Ozaukee County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on September 12, 2013, at Port Washington, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's FS benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Pahoua Vang

Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County. The Petitioner's household size is three.

2. On July 30, 2013, the Petitioner completed a FS renewal application. On August 8, 2013, the agency denied FS benefits effective August 1, 2013 to the Petitioner due to household income over the program limit.
3. On August 22, 2013, the Petitioner submitted additional information regarding household income.
4. The Petitioner's household income includes unemployment compensation benefits of \$331/week (\$1,423.30/month) and \$343/month of child support. The child support order for Petitioner's two children was modified in July, 2013.
5. Petitioner's rent expense is \$605/month.
6. On August 23, 2013, the agency issued a Notice of Decision to the Petitioner informing the Petitioner that she was eligible for \$106 in FS benefits for the month of August, 2013 and \$112/month effective September 1, 2013. Effective October 1, 2013, a mass change resulted in the Petitioner's benefits increasing to \$115/month.
7. On August 17, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

In determining the amount of FS to be issued each month, the agency must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$152 per month for a three-person household. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin Handbook (FSH), § 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FSH, § 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FSH, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH, § 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FSH, § 4.6.7.

In a fair hearing concerning the sufficiency of FS issued, the burden of proof is on the agency to demonstrate that it correctly computed the petitioner's FS allotments, and the petitioner must then rebut this evidence with her own evidence showing the agency was incorrect.

All non-exempt income, earned and unearned, must be considered in determining eligibility and the FS allotment to which a household is entitled, including child support:

Child Support and family Support must be prorated among the members covered by the court order. If a Family Support order includes the custodial parent, the income proration would also include that parent. Child support is prorated for only the children covered by the court order. Maintenance is budgeted for the person actually receiving it. The most up-to-date information about Child Support and Maintenance is auto populated on the CARES Client Assistance for Reemployment and Economic Support Worker Web Child Support screen.

FSH, § 4.3.4.2.

Eligibility and benefit calculations for FS are based on prospectively budgeted monthly income using estimated amounts. The income to be budgeted is identified through the interview and the verification process. The agency should include only income actually available to the group. The agency must use the best-verified information available when determining the best estimate of income. FSH, § 4.1.1, 7 CFR § 273.9.

In this case, the Petitioner did not dispute the budget figures used by the agency for the FS allotments effective September 1, 2013 and October 1, 2013. She does dispute that \$112/month or \$115/month is sufficient for a three person household. Both the agency and administrative law judge are bound by the regulations for determining the FS allotments. In this case, I reviewed the budget screens for the allotments effective September 1, 2013 and October 1, 2013 and find the agency properly calculated the Petitioner's FS allotments based on unearned income and applicable deductions.

For the FS allotment of \$106 for the month of August, 2013, the Petitioner disputes the agency's calculation of child support income. The agency used the actual amount of CS (\$356) the Petitioner received for August, 2013 in determining the FS allotment. I reviewed the budget screen and conclude the agency properly calculated the FS allotment for August, 2013.

CONCLUSIONS OF LAW

The agency properly calculated the Petitioner's FS monthly allotments for August, 2013 at \$106, for September 1, 2013 at \$112 and effective October 1, 2013 at \$115.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of October, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 14, 2013.

Ozaukee County Department of Social Services
Division of Health Care Access and Accountability